

**Transition review of countervailing duties applying to electric
bicycles originating in the People's Republic of China (PRC)**

Review No. TS0038

Comments on the Statement of Essential Facts

by

Ministry of Commerce of the People's Republic of China

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1. INTRODUCTION

1. The Ministry of Commerce of the People’s Republic of China (“**GOC**”) refers to the Statement of Essential Facts (“**SEF**”) issued by the UK Trade Remedies Authority (“**TRA**”) in the context of the transition review of countervailing duties applying to electric bicycles originating in the People’s Republic of China (“**China**”). The SEF was published on 24 May 2024.
2. The GOC appreciates the opportunity to present its perspective as an interested party in this transition review. Respectfully, the GOC submits the following comments, *inter alia*, the GOC (i) acknowledges TRA’s objective examination of the Economic Interest Test and the fair and reasonable findings, (ii) recognises TRA’s conclusion that the injury to the domestic industry is relatively minimal, given the robust performance of the domestic industry, and (iii) welcomes TRA’s recommendation to revoke the application of the countervailing duty on the subjected products from the PRC. However, the GOC (iv) disagrees with certain findings by TRA regarding the likelihood of subsidy assessment in accordance with the requirements of the WTO Agreement on Subsidies and Countervailing Measures (“**SCM Agreement**”).

2. OBJECTIVE EXAMINATION OF THE ECONOMIC INTEREST TEST

3. The GOC acknowledges that the TRA correctly found that:

“Our assessment of economic significance found e-bikes are important to UK producers and somewhat important to upstream businesses, retailers and importers. Retailers and importers are more economically significant in terms of all metrics considered. Upstream businesses, retailers and importers

were found to be somewhat vulnerable to economic shocks but UK producers were not".¹

4. In addition, the TRA concludes:

“Overall, we consider the negative impacts of imposing the measure to be disproportionate to the benefits of extending the measure”.²

5. In the SEF, the TRA conducts a full assessment of the interests and welfare of the industry, affected industries, and consumers of the UK. The TRA also considers other relevant factors, such as environmental and health impacts. The broad-range analysis and well-structured consideration lays solid ground for the conclusion.
6. Further, the TRA’s assessment of the economic interests of the UK industry and affected industries and consumers was based on sound economic analysis methodology and widely collected statistics and facts. The GOC agrees that the methodology and factual basis employed reflect the economic realities of relevant economic players involved in relation to the application of the duty.
7. In sum, the GOC believes that the TRA’s finding in the SEF concerning the economic interest assessment results from an objective assessment, supported by positive evidence.

3. CORRECT CONCLUSION OF THE LEVEL OF INJURY

8. In the SEF, TRA clarifies that *“this injury could be relatively low given the strong performance and high brand loyalty”*.³

¹ The Statement of Essential Facts, para. 348.

² Ibid, para. 355.

³ Ibid, para. 347.

9. The GOC recognizes this finding is a balanced assessment of all relevant economic indices and indicators regarding the current state of the UK industry. For example, TRA observes that the ability to raise capital or investments, increased wages, increased employment levels, and a planned increase in production capacity demonstrate a positive position for the UK industry. Even though some economic indicators and indices may be, to some extent, unfavourable, the overall state of the UK industry, as the authority correctly explained, shows “*strong performance*”.
10. However, the GOC urges the TRA to support and strengthen its recommendation to revoke the application of the countervailing duties at issue. As provided and regulated by the SCM Agreement, the imposition of a countervailing duty requires the establishment of both countervailable subsidies and material injury to the domestic industry caused by subsidised imports. Lacking either of the two conditions will undermine the justification for such a countervailing duty.
11. In this review, the TRA explicitly and correctly identifies that the injury could be relatively low. Therefore, in the opinion of the GOC, the injury does not reach a “material” level suffered or would be suffered by the UK industry.
12. Therefore, the recommendation to revoke the countervailing duty under review is further substantiated by the finding of “*low injury*”.

4. CORRECT RECOMMENDATION OF THE DUTY UNDER REVIEW

13. TRA states that “*our intended recommendation is to revoke the application of the countervailing amount under regulation 100B of the Regulations for the goods subject to review from the PRC*”.⁴

⁴ Ibid, para. 360.

14. The GOC welcomes this recommendation and believes that the revocation of the duty under review will benefit not only the affected industries and consumers, but also contribute positively to the overall economic development in the UK.

5. WTO-INCONSISTENT FINDING OF THE SUBSIDIES

15. The GOC disagrees with TRA’s findings that certain programs are likely to be countervailable should the duty under review be removed. To be specific, these programs include “Preferential financing and insurance: loans and export credit insurance”, “Provision of goods for less than adequate remuneration (electric motors and batteries)”, and “Provision of land use rights (LUR) for less than adequate remuneration”.
16. To avoid repetition, the GOC incorporates relevant explanations and arguments from previous submissions made by the GOC in the context of this investigation.
17. The SCM Agreement stipulates that, to be a countervailable subsidy, several conditions must be met, including that the financial contribution is conferred by a government or public body. In GOC’s prior submissions, the GOC explicitly explained that there is no such preferential lending program in China. Furthermore, without a correct demonstration of the vesting functions of governments to private entities, as well as directives and entrustments by government authorities to such private entities, there would be no countervailable subsidies.
18. In particular, for the programs of “Preferential financing and insurance: loans and export credit insurance” and “Provision of goods for less than adequate remuneration (electric motors and batteries)”, the TRA in the SEF arbitrarily concludes these programs are likely to benefit companies and therefore constitute countervailable subsidies. The GOC has repeatedly pointed out that commercial

loans provided by commercial banks, including state-owned commercial banks, in China, do not automatically qualify as countervailable subsidies. A mere description of relevant documents and policies cannot be deemed evidence that such banks serve as a kind of public body in the context of countervailing reviews. Consequently, these commercial loans should not be regarded as a financial contribution to the exporters or industry at issue without substantial evidence proving the banks are public bodies.

19. For similar reasons, the program “Provision of goods for less than adequate remuneration (electric motors and batteries)” cannot be taken as a countervailable subsidy program.
20. As to the program of land use rights, the GOC firmly maintains that no such subsidy program exists in which the government provides low-cost land use rights. According to the SCM Agreement, to be an actionable subsidy, it shall be investigated or reviewed in accordance with Articles 1 and 2 of the SCM Agreement. When reviewed from the SCM perspective, it cannot be concluded that the public auction of industrial land use rights by governments constitutes an actionable subsidy.

6. CONCLUSION

21. In light of the above, the GOC urges the TRA to terminate the review and revoke the countervailing duty under review immediately. The GOC believes that such a decision would be justified based on the comprehensive analysis presented and the lack of substantial evidence supporting the continuation of the duty. Revoking the countervailing duty will not only align with WTO regulations but also foster a fair economic environment.